IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13212 of 1993

with

CIVIL APPLICATION No 5438 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT NARMADA VALLEY FERTILIZERS CO LTD

Versus

BHARATKUMAR RAMNIKLAL KOYANI

Appearance:

1. Special Civil Application No. 13212 of 1993

MR NANDISH CHUDGAR for NANAVATI ASSOCIATES for the Petitioner

MR ND SONGARA for MR BM MANGUKIYA for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 06/10/2004

ORAL JUDGEMENT

The petitioner, a public limited company (hereinafter referred to as "the Company"), challenges the judgment and award dated 7th September, 1993 passed by the Labour Court, Rajkot in Reference (LCR) No.391/1986.

The respondent (hereinafter referred to as "the workman") was seasonally engaged as daily wage labourer by the Company at its Rajkot Depot for delivery of fertilizers to the farmers. The service of the workman was found to be unsatisfactory. Several memoranda were issued to the workman. The service of the workman was terminated on 16th March, 1984. Feeling aggrieved, the workman raised industrial dispute which came to be referred to the Labour Court, Rajkot and registered as above. By impugned judgment and award the Court allowed the claim made by the workman. The Court directed the Company to reinstate the workman in service and to pay him 50% of the backwages. Feeling aggrieved, the Company has preferred the present petition.

Learned advocate Mr.Chudgar has submitted that the workman was a daily wage labourer. He used to be engaged for delivery of fertilizers to the farmers. The very nature of work required the service of the workman only seasonally. He has submitted that as the service of the workman was not satisfactory he was given several memoranda. In the written statement the Company had taken a specific plea that no disciplinary proceeding was required to be held against the workman. However, in the event the Court came to the conclusion that a disciplinary enquiry was required, the Company be permitted to prove the charge against the workman before the Court. The learned Judge has taken note of the said pleading in paragraph 4 of the judgment. However, in the later part of the judgment the learned Judge has held that if the service of the workman was unsatisfactory the Company was required to issue a show-cause notice. Neither the Company had issued show-cause notice; nor it had held disciplinary proceeding against the workman; nor the Company had requested the Court to hold such disciplinary proceeding and prove the charge against the workman before the Court. The Court held that the discharge of the workman from service was contrary to Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Mr.Chudgar has submitted that the learned Judge has committed a manifest error in holding that the Company had not requested the

Court to permit the Company to prove the charge against the workman before the Court. He has submitted that the matter calls for remand to the Labour Court and an opportunity to the Company to prove the charge against the workman.

Learned advocate Mr.Songara has submitted that the discharge of the workman from service, having been made in contravention of Section 25-F of the Act, the order of reinstatement in service and the backwages should necessarily follow. The impugned award, therefore, does not warrant interference. He has also submitted that the Company has failed to comply with Section 17-B of the Act. Unless the Company complies with the said provisions, the petition shall not be heard and decided.

As to the benefit under Section 17-B of the Act, the workman has filed the above Civil Application on 22nd July, 2003. It has been stated that the workman is unemployed since his discharge from service on 16th March, 1984. The statement has been controverted by the Company. It is stated that the workman has been serving under some R.T.O. agent. For the purposes of Section 17-B of the Act, a bare statement that the workman is gainfully employed is not sufficient. The Company has failed to produce any evidence to show that the workman is gainfully employed. However, the statement of the workman that he has been unemployed since 16th March, 1984 is unbelievable as the workman has not explained why the workman did not seek compliance with Section 17-B of the Act for more than nine years.

In above view of the matter, the Civil Application No.5438 of 2003 is allowed to the extent that the petitioner - Company shall pay to the workman last wages drawn by him for the period from 1st July, 2003 till date i.e. 6th October, 2004. Such amount shall be paid within four weeks from today.

The learned Labour Judge, having taken note of the pleadings and a specific request made by the Company to hold the enquiry before the Labour Court to prove the charge against the workman, has manifestly erred in holding that no such request was made by the Company and in holding that the action of discharge of the workman from service was violative of Section 25-F of the Act.

In above view of the matter, the impugned judgment and award dated 7th September, 1993 passed by the learned Labour Judge, Rajkot in Reference (LCR)

No.391/1986 is quashed and set aside. The said reference is remanded to the Labour Court, Rajkot. The Company shall be at liberty to hold the enquiry before the Labour Court and to prove the charge against the workman.

The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to cost.

It is clarified that this Court has not examined the issue whether a disciplinary proceeding was required to be held against the workman or not; or whether the requirement of Section 25-F of the Act was required to be followed or not. In the event, after the present order of remand the Company loses in the reference and the award of the Labour Court is challenged before this Court or before any other court or authority of competent jurisdiction, the Company shall be at liberty to agitate the said issues in such proceeding.

(Ms. R.M.Doshit, J.)

/sakkaf